

November 15, 2001

To: Brenda J. Erdoes, Legislative Counsel
LCB Legal Division

From: Dorla M. Salling, Chairman

Subject: Comprehensive Review of Parole Board Standards - NRS 213.10885 Sub-Section 5.

On Friday, October 12, 2001, the Board of Parole Commissioners conducted a comprehensive review of the parole board standards in accordance with NRS 213.10885. Public notice regarding the board's intent to conduct a comprehensive review was posted or mailed on August 30, 2001 to the following agencies, persons or locations:

The parole board's notice of the comprehensive review of the parole standards was posted at the parole board's offices in Carson City and Las Vegas, at the Attorney General's Offices in Carson City and Las Vegas, at the Carson City Courthouse and Clark County Courthouse, at the Carson City Public Library and Clark County Main Library, and at the offices of Parole and Probation in Las Vegas. In addition, copies of the notice of public hearing for the comprehensive review of parole standards were delivered to every county main public library, the State Library and Archives, the Nevada Department of Corrections, every Nevada Sheriff and Police Chief, every Nevada District Attorney, every Nevada District Judge, the Nevada State Public Defenders, the Washoe County and Clark County Public Defenders, the Nevada Attorney General and were mailed out to every person on the board's list for notification of public meetings. The notice was also posted on the parole board's web site located at <http://parole.state.nv.us/>.

Attendance:

The public meeting held to conduct the comprehensive review of parole standards was attended by the chairman and all six members of the Board of Parole Commissioners, five parole board hearing representatives and the board's executive secretary and management analyst.

Public Input:

The Board received a letter from Pat Hines of Nevada Cure (an affiliate of national Citizens United for Rehabilitation of Errants) dated October 11, 2001. Mrs. Hines requested that her written comments be made part of the meeting minutes and are accordingly attached to this summary as well as to the minutes of the meeting.

Members of the public attending the public meeting included Kim Smith from the Las Vegas Sun, Donna Metcalf, president of The Friends and Family of Incarcerated Persons, Inc., Mercedes Maharis from the Sparticus project and Kim Bakken.

Staff Input and Recommendations:

The parole board's management analyst (David Smith) presented a packet of statistical information which included:

- a. Six charts depicting historical statistics regarding parole board actions.
- b. Seventeen charts and graphs depicting statistical information regarding parolees who were released during the period July 1, 1998 through June 30, 2001. This information provided information based on indicators used in the parole standards and depicted the failure rate and type of failure by gender and offense group.
- c. Six charts and graphs depicting the number of inmates released from prison on parole and the number of inmates returned as parole violators during the period July 1, 1998 through June 30, 2001. This information included those parolees who may have been released prior to July 1998, and included multiple releases and returns during the specified period. These charts also indicated the type of failure by gender and offense group.
- d. Four miscellaneous charts depicting parolees released prior to serving the guideline recommended months to serve during the period November 1999 through December 2000, the percent of the parolee population returned during fiscal years 2000 and 2001, and a chart from the California Department of Corrections depicting annual returns of parolees to prison as a comparison.

A packet of information provided to the board by Mr. Smith is included with this summary.

Mr. Smith also provided a memo with a recommendation to the board regarding the practice of not using a guideline form when considering inmates who were previously released on parole, revoked and considered for release on parole again on the instant offense. The reason the board historically did not use a guideline when considering these inmates is that if the inmate was granted parole using a standard that proved to be ineffective in that particular case, it did not make sense to apply the same standard when subsequently considering that particular inmate for parole release on the same sentence.

Mr. Smith provided procedural scenarios the board could adopt to ensure compliance with NRS213.10885, one of which suggested a factor on the score sheet that would provide for a greater punishment for those inmates who were released on parole and revoked, and were being considered for parole again on the same sentence.

Board Discussion and Changes to Standards, Policies, Procedures, Programs or Forms:

1. The board discussed the practice of not applying the standard when considering previously revoked inmates for re-release on parole.

The board voted to accept staff's recommendation to prepare a guideline form on each inmate regardless of whether the inmate was previously revoked off parole on the instant offense. The board further directed the staff to explore ways to modify the guideline to address the issue of parole violators being considered for re-release on parole, including possibly using a method that takes into consideration the length of time an offender has successfully been residing in the community before returning to the board as an accused parole violator. The board requested that staff provide a recommendation regarding this subject at a future meeting of the board.

2. The board discussed a change to consider old sexual assault cases involving children higher on the scale than just sexual assault.

The board did not entertain a motion to consider sexual assault cases any differently than the board currently considers them with regard to the application of the guidelines.

3. The board discussed counting as a probation/parole failure situations when a parolee/probationer from another state commits a crime in Nevada and the other state simply closes the case without a formal revocation. The board also discussed counting a failure while participating on a house arrest program as a supervision failure.

The board voted unanimously to modify the guideline form to count any supervision failure including to count as a failure instances when offenders, while on parole or probation from another state, are convicted of a new crime in Nevada regardless of whether the other state formally revoked the parole or probation of the offender. The board also applied the interpretation of supervision failure to include any prison house arrest program failure or dishonorable discharge from parole or probation. The board further decided to add a factor to the standards to give credit for the successful completion of parole or probation, or the successful participation in a prison house arrest program and weighted each success with the subtraction three points on the guideline form.

4. The board discussed the practice of applying the 'A' crimes to the current legislative intent as opposed to mold to the sentence actually imposed.

During the last comprehensive review, the board changed a philosophical practice regarding the interpretation of the application of 'A' crimes and based the crime severity level for the recommended range of time to serve on the current statutory penalties. The board applied the

standards in this manner to allow them to consistently apply the standards to a type of crime regardless of the sentence. An example is a person convicted of second degree murder. Prior to 1995, the minimum sentence for second degree murder was five years. After 1995, the minimum sentence became 10 years. In an effort to be consistent, the board decided to not apply the standard in a manner that differentiates between the sentence, and instead applied the standard to consistently reflect the severity of the crime, therefore, the minimum recommended time to serve for a person convicted of second degree murder would be 10 years regardless of the actual minimum sentence imposed. In making this change in 1999, the board recognized that the board is not bound in following the guideline recommendation and may grant parole to an inmate who has not served the recommended months to serve as based on the standard.

The board discussed this practice and decided in a vote of 5 - 2 in favor of changing this procedure to apply the range of sentences for 'A' crimes to reflect the sentence imposed. The board also recognized that those offenders who have been sentenced to the more lengthy minimum sentences have not been considered for release on parole and are not affected by this change.

Additional input to the Board Regarding the Standards:

Prior to the meeting held for the comprehensive review of parole standards, the board received training from Dr. James Austin, Director of the Institute of Crime, Justice and Corrections at the George Washington University in Washington DC on the topic of risk assessment instruments and parole standards.

Prior to the training, Dr. Austin was provided a copy of the Nevada statutes requiring the board to adopt standards and the specific components the board must give consideration to, a copy of the Nevada Administrative Code pertaining to parole guidelines, the statistical information prepared by the board's management analyst and a sample copy of the current parole guidelines.

Dr. Austin reviewed the materials and presented information to the board during the training with regard to the utilization of risk assessment instruments and some observations he noted with regard to Nevada's parole guidelines.

Specific observations included, but are not limited to:

1. The nation's prison population has stabilized and may even start to decline slightly yet the Nevada prison population continues to increase.
2. A significant number of inmates granted parole in Nevada are not released on parole.
3. The number of technical violations have increased substantially over the past few years.
4. The Nevada Board of Parole Commissioners has not validated the standards used to grant or revoke parole.

5. The Nevada Board of Parole Commissioners is both using and not using certain items that have been shown to be highly predicted of recidivism and/or risk to public safety.
6. The individual items on the guideline worksheet used by the board have not been properly tested and validated.
7. The assessment process should be conducted by professional staff rather than the parole commissioners.
8. The standards work sheet is not automated.

Dr. Austin prepared a detailed report regarding these and other observations with recommended steps the board should take to ensure the guidelines adopted by the board are effective in assessing the risk of releasing an inmate into the community on parole.

Results and conclusions from the board's review pursuant to subsection 5 of NRS 213.10885:

The board concluded based upon statistical information and discussion that the standards appear to be effective in predicting the probability that a convicted person will live and remain at liberty without violating the law if parole is granted or continued.

Although the board concluded that no evidence was presented that would indicate the standard was found to be ineffective, the board recognized the points made by Dr. Austin during the training session and voted to continue to use the standard in its current form with the modifications as voted on previously, and work toward creating a validated risk assessment instrument with the assistance of the National Institute of Corrections.

Included with this summary is a sample copy of the of the guideline which became effective on November 1, 2001, and a copy of the procedures adopted by the board for the preparation of the guideline.

DMS/ds

Enclosures

cc: file
parole board members, hearing reps and staff